

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

KIMBERLY J. DAVIS,

Plaintiff,

vs.

**LIV HOSPITALITY, LLC and BLUE SKY
GAMING, INC. d/b/a TIN LIZZIE
GAMING RESORT,**

Defendants.

5:21-cv-5054

COMPLAINT

COMES NOW the Plaintiff, Kimberly J. Davis, by and through her attorney, Kimberly Pehrson, and hereby states and alleges as follows:

PARTIES/JURISDICTION

1. That Plaintiff Kimberly J. Davis (“Davis”) is, and at all times relevant to this matter was, a resident of Naper, Nebraska.
2. That Defendant LIV Hospitality, LLC (“Defendant” or “LIV Hospitality”) is, and at all times relevant to this matter was, a South Dakota limited liability company with its principal place of business in Rapid City, South Dakota.
3. That upon information and belief, Defendant LIV Hospitality, LLC operates or otherwise does business as Tin Lizzie Gaming Resort (“Tin Lizzie”).
4. That upon information and belief, Defendant Blue Sky Gaming, Inc. is a South Dakota corporation with its principal place of business in Rapid City, South Dakota and does business as Tin Lizzie Gaming Resort is a d/b/a of Blue Sky Gaming, Inc.

5. That because there is diversity of residence and citizenship between Plaintiff and Defendants, and because the amount in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.00, this Court has jurisdiction pursuant to 28 U.S.C. 1332.

GENERAL ALLEGATIONS

6. That on February 14, 2020, Davis and her husband were in Deadwood, South Dakota celebrating their wedding anniversary.

7. That Davis had dinner at the Tin Lizzie Gaming Resort and walked outside at approximately 7:30 p.m.

8. That, as Davis was walking on the sidewalk outside of the Tin Lizzie Gaming Resort, she slipped on ice and fell to the ground.

9. That the sidewalk area where Davis fell is under the control of Defendants Liv Hospitality, LLC and/or Blue Sky Gaming, Inc.

10. That the area where Davis fell is generally where the sidewalk and an entry driveway for the parking lot to Tin Lizzie meet.

11. That the area where Davis fell was next to a wrought iron fence and where snow had been shoveled and pushed up against the fence.

12. That the temperature during the day of February 14, 2020, reached above freezing, resulting in snow which had been piled against the fence next to the sidewalk melting and running onto the sidewalk.

13. That as evening occurred, the temperature outside dropped and snow which had melted and ran onto the sidewalk had frozen.

14. That the snow piled against the fence adjacent to the sidewalk created an unnatural accumulation of snow which melted and formed ice, causing the unnatural and dangerous icy condition.

15. That when Davis fell to the ground, she suffered a broken left ankle, among other injuries.

COUNT 1 - NEGLIGENCE

16. Davis realleges and incorporates by reference hereto Paragraphs 1 through 15 as though they were fully set forth herein.

17. That Defendants had a duty to maintain the sidewalk in a reasonably safe condition.

18. That Defendants had a duty to clear snow and ice from the sidewalk.

19. That Defendants had a duty to prevent the sidewalk from becoming slippery and dangerous to travel.

20. That Defendants breached the aforementioned duties.

21. That as a proximate and legal result of Defendants' breach of the aforementioned duties, Davis sustained injury; experienced pain and suffering, and will experience pain and suffering in the future; sustained a loss of enjoyment of life; incurred expenses for medical care, and will incur further like expenses in the future; sustained a loss of earnings, and will incur a further loss of earning capacity; and suffered permanent injury and disability.

WHEREFORE, Davis respectfully requests that this Court enter a judgment against Defendants Liv Hospitality, LLC and Blue Sky Gaming, Inc. d/b/a Tin Lizzie Gaming Resort, jointly and severally, granting the following relief:

(a) General and special damages to be proven at trial;

- (b) Any and all costs and disbursements incurred in this action, including attorneys fees;
- (c) Pre and post-judgment interest; and
- (d) For such other and further relief as the Court may deem equitable and just under the circumstances.

Dated this 30th day of August, 2021.

THOMAS BRAUN BERNARD & BURKE, LLP

By: /s/ Kimberly Pehrson.
Kimberly Pehrson
4200 Beach Drive – Suite 1
Rapid City, SD 57702
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Fax: 605.348.5852
E-mail: kpehrson@tb3law.com

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Davis, Kimberly J.

(b) County of Residence of First Listed Plaintiff Boyd County, NE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

**Thomas Braun Bernard & Burke, LLP, 4200 Beach
Drive, Suite 1, Rapid City, SD 57702; 605.348.7516;
Kimberly Pehrson**

DEFENDANTS

Liv Hospitality, LLC and Blue Sky Gaming, Inc. d/b/a Tin
Lizzie Gamino Resort

County of Residence of First Listed Defendant Pennington County SD
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause:
Personal Injury, fall on premises owned and operated by Defendants.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8-30-2021

SIGNATURE OF ATTORNEY OF RECORD

Kimberly Pehrson

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE